

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2341 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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BANK OF BARODA

Versus

RESP NO. 1 DELETED

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Appearance:

MR RM DESAI for Petitioner  
DELETED for Respondent No. 1  
MR ASHOK L SHAH for Respondent No. 2  
NOTICE SERVED for Respondent No. 3, 4

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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision:25.8.1999

CAV JUDGEMENT

This petition has been filed for quashing  
the orders dated 31.8.78 of the Assistant Commissioner of  
Payments in Claim petition no.250 of 1977 and the order  
dated 1.5.82 passed in Civil Misc. Appeal No. 131 of

1978 passed by the learned Judge, City Civil Court, Ahmedabad. The respondent no. 1 was declared a sick unit under section 18(1) of Industries (Development and Regulation) Act, 1951 by a notification dated 24.11.1970 and was taken over on 24.11.70 by the Authorised Controller. Lateron, the sick unit was nationalised under the provisions of Sick Textile Undertakings (Nationalisation) Act, 1974 with effect from 1.4.74. The petitioner bank granted banking facilities to the sick unit at the request of the Authorised Controller who also executed guarantee deed dated 2.9.72. The claim petition was preferred and the petitioner bank filed a claim petition for a sum of Rs. 72,85,557.11 ps. for various amounts outstanding in different accounts. After going through the material on record, the Assistant Commissioner of Payments allowed the claim of Rs. 42,87,975.69 ps. treating as principal amount and rejected the claim of Rs. 28,65,556.47 ps. being the amount of interest.

The learned counsel for the petitioner bank contended that the liability of the Authorised Controller was to pay the entire amount till the liability is discharged.

2. This Court in the case of State Bank of India vs. New Manekchowk Spinning and Weaving Mills Company Ltd., and others (Special Civil Application No. 3395 of 1981 decided on today has held that loan means an advance whether of money or in kind on interest made by a money lender and shall include a transaction on a bond bearing interest in respect of post liability when a loan is renewed. It is also held thast even liability of a sick textile undertaking prior to 1st April, 1974 shall be the liability of such owner. The authorised controller has undertaken the liability of payment of amount of the Bank-petitioners for the pre-take over period unless thast liability is discharged by making payment of loan or in any form with interst the owenr/Authorised Controller/NTC, that liability will continue and thast liability has to be dischasrged by them. The owner/Authorised Controller/NTC are also required to discharge the liabilkity of payment for period post nationalisation period. The liability continued till 1.4.74 when the liability was re-affirmed prior to the appointed day i.e. 1.4.74 and that liability continues till the loan advanced with interest is discharged. It is not necessary that the loan should be actually given in cash. If the liabiliity has been credited, that would amount to a liability of loan and that will be considered as loan under the Act and that

liability will continue till it is discharged. As such, the entire amount of the bank falls under category 1(a) part I of second schedule of the Act and for that amount, the petitioner bank is entitled.

3. Accordingly, this petition is allowed and the orders passed by both the authorities below are quashed and set aside. The respondent no.2 is directed to pay the entire amount of the petitioner's claim in each account for which the Authorised Controller and other gave guarantee and assurance for the payment, within three months from the date of the presentation of the certified copy of this judgment. Rule is made absolute accordingly with no order as to costs.

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